IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8914 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LATABEN R.GANDHI CHILDREN TRUST.

Versus

INCOMETAX OFFICER

Appearance:

1. Special Civil Application No. 8914 of 1994
MR MJ SHAH for Petitioner No. 1
MR AKIL KURESHI with MR MANISH R BHATT for Respondent

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 06/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The petitioner, a specific trust, has challenged the order of the Commissioner of Income-tax dated 19.4.1994 passed under Section 264(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The petitioner requested the Commissioner to quash the order of the Income-tax Officer passed under Section 201(1A) whereby tax of Rs.6,020/- alongwith interest of Rs.2,705/- was sought to be recovered. The petitioner also challenged the composition fees of Rs.25,887/- in relation to the alleged offence of non-deduction of tax at source. The petitioner for this purpose relied upon the decision of the Tribunal, but the Commissioner was of the view that as the said decision had not been accepted by the department, it was not possible to grant any relief to the petitioner.

2. We have heard Mr MJ Shah appearing on behalf of the petitioner and Mr Akil Kureshi appearing on behalf of the respondent. It is not necessary to deal with the facts and contentions in details in view of the fact that the issue raised in the present petition stands concluded by the decision of this Court in case of CIT vs. Deepak Family Trust No.1 & Ors., (1995) 211 ITR 575.

Following the aforesaid decision, this petition is allowed. The impugned order dated 18.4.1994 is quashed and set aside. the assessee would be entitled to refund of tax of Rs.6,020/- and interest at Rs.2,705/-. In so far as the composition fee of Rs.25,887/- is concerned, at the time of admission of the petition, the learned advocate for the petitioner did not press the prayer in relation to the said amount and hence, it is not necessary to pass any order as regards composition fee of Rs.25,887/-.

3. Rule is made absolute to the aforesaid extent. The petition is disposed of accordingly. No order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-